

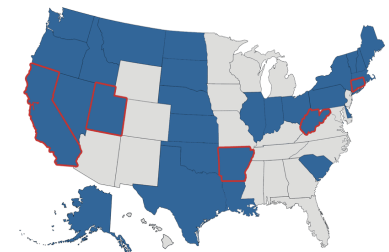


## Mapping Performance-based Standards and Civil Rights Investigations<sup>1</sup>

Performance-based Standards (PbS) was launched by the Department of Justice (DOJ), Office of Juvenile Justice and Delinquency Prevention specifically to address safety, health and quality of life issues in youth facilities identified as problematic in the 1994 Conditions of Confinement Study. PbS' primary purpose is to provide facility leaders and staff with national standards to guide operations to best serve youths, staff and families and to continuously monitor daily practices and culture within facilities with performance outcome measures. Over time, PbS uniquely has established uniform data definitions, outcome measures and a quality assurance process that creates the most timely, comprehensive and accurate national database of its kind.

The power of PbS' data is being used increasingly not only to manage facilities on a daily basis and improve outcomes for youths but also to both prevent dangerous incidents that can lead to civil rights violations and investigations and to monitor practice changes required as part of legal settlements and monitoring agreements. To understand the connection between PbS and the DOJ's basis for investigations pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), PbS' developers, the Council of Juvenile Correctional Administrators (CJCA), sought a legal analysis of PbS' standards, outcome measures and expected practices compared to 18 juvenile civil rights investigations and cases over 10 years. The analysis concluded that facilities implementing PbS as intended will meet standards at very high operational expectations, greater than Constitutional minimum requirements, and therefore, not be significantly at risk for CRIPA violations.

PbS sets national standards that establish high expectations in seven areas of facility management: safety, security, order, health/mental health, programming, reintegration and justice. PbS collects both quantitative and qualitative data from administrative forms, youth records, incident reports, exit interviews of youths and climate surveys of youths, staff and families. PbS trains and supports participants to collect data, analyze the results and change practices. PbS data undergoes a rigorous data quality assurance process and has established its reliability and validity over 18 years. The results indicate how well facilities meet PbS' standards and demonstrate a commitment to treating all youths in custody as if they are one of our own. In 2004 PbS won the Innovation in American Government Award for uniquely and effectively addressing conditions of confinement.



States shown in blue have participating corrections, detention or community-based programs. States highlighted in red have new sites joining in October 2012.

<sup>1</sup>Rainey, Ryan H. "Performance-based Standards & CRIPA Investigations." Report to the Council of Juvenile Correctional Administrators, August 2006. The analysis was done by Ryan Rainey, past Senior Trial Attorney Department of Justice, Civil Rights Division - Special Litigation Section, Washington, D.C. <sup>1</sup>



## *Mapping PbS and CRIPA Cases*

PbS is a voluntary, self-improvement and accountability system used in correction, detention and community-based programs in 28 states and the District of Columbia. PbS offers systematic and scientific methods to measure outcomes, review facility operations and make strategic and measurable improvements that sustain positive reforms.

DOJ's Civil Rights Division investigates juvenile facilities under the authority of CRIPA, 42 U.S.C. § 1997, and/or Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. Under these acts, DOJ investigates when a governmental authority engages in a pattern or practice of conduct that deprives juveniles of rights, privileges or immunities protected by the Constitution or federal law. DOJ notifies the state or county of its intent to investigate. The investigation includes tours by experts, interviews at the facility and discovery of documents. Once the investigation is concluded, DOJ issues a findings letter. If the findings indicate violations that deprive youths of their constitutionally-protected rights, DOJ proceeds to negotiate a settlement with the facility.

As a general matter, government agencies must provide confined youths with reasonably safe living conditions, medical and mental health care and education. DOJ requires states to meet minimal constitutional and federal standards for confined youths. In contrast, PbS ensures best practices at youth facilities by categorizing standards into goals in seven areas of operations: safety, order, security, health and mental health, programming, justice and reintegration. PbS provides facilities with reports twice a year evaluating performance based on outcome measures, expected practices and processes.

The PbS-CRIPA legal analysis mapped DOJ's basis for civil rights investigations to PbS' outcome measures and expected practices. The PbS expected practices are part of the PbS blueprint of operations, a document that connects the national standards and outcomes measures to "expected practices" and processes that lead to desirable outcomes as shown through research, experience or expert opinion. PbS was the first of the professional standards efforts to provide a blueprint document to help diagnose and guide facilities as they implement change.

The violations found in the 18 DOJ facility investigations as well as any relevant constitutional, statutory or case law that was relied on by DOJ to justify an investigation were included in the analysis. Additionally, all measures that have been required by DOJ to remedy any constitutional or federal violations were then mapped to PbS. The DOJ cases include safety and health issues, punishing juveniles without due process, not having a grievance system, restraints without protection, inadequate education, medical or mental health care, any type of discrimination and equal protection.

The analysis concluded that PbS goals relating to safety, order, security, health and mental health are tied closely to the constitutional issues upon which CRIPA investigations focus and that facilities implementing PbS standards and using PbS outcome measures minimize and potentially eliminate facilities' risk of violating CRIPA and constitutional requirements.